

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

DONALD YORK EVANS et al.,)
Plaintiffs,)
vs.)
HOWARD SKOLNIK et al.,)
Defendants.)

)

3:08-cv-00353-RCJ-VPC

ORDER

This is a prisoner civil rights case arising out of alleged illegal electronic eavesdropping of prisoners' telephone calls with their attorneys. Pending before the Court is a Motion in Limine (ECF No. 311). Defendants ask the Court to exclude Plaintiff's Exhibit 19 (certain handwritten notes). Defendants argue that because Plaintiff first identified Exhibit 19 on August 12, 2013 in his list of exhibits for trial, and did not list it in the May 9, 2012 Joint Pretrial Order, it should be excluded. It is within the Court's discretion to exclude evidence not identified in the pretrial order. *E.g., Swinton v. Potomac Corp.*, 270 F.3d 794, 809 (9th Cir. 2001). The Court grants the motion. Defendants have prepared for trial for well over a year under the impression that they would not have to address this piece of evidence. Plaintiff may not in fairness adduce it with only two weeks notice before trial. The response to the present motion is not due until after trial begins, but the parties must have the Court's in limine ruling before trial or the purpose of the in limine motion will be defeated. Plaintiff will have an opportunity at trial to argue that the late revelation of his intent to adduce this evidence should be excused.

111

CONCLUSION

IT IS HEREBY ORDERED that the Motion in Limine (ECF No. 311) is GRANTED.

IT IS SO ORDERED.

Dated this 20th day of August, 2013.

ROBERT C. JONES
United States District Judge